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Rs. 23.42 lakhs will have to be allocated among the three States of Andhra, Madras and Mysore on some agreed basis, as this has not been specifically provided for in the Andhra State Act, 1953.

The amount merged in the general balance of the Government was only Rs. 12.71 lakhs. Irrespective of the size of the receipts relating to the Hindu Religious and Charitable Endowments Department, the Government have to meet the entire expenditure on administration of the Department from 30th September 1951. In fact, the expenditure exceeds the receipts considerably as shown under :—

(1)	1951-52.	1952-53.	Budget Estimate
	(2)	(3)	1954-55.
	RS.	RS.	RS.
	IN LAKHS.	IN LAKHS.	IN LAKHS.
Receipts	1.78	7.15	4.00
Expenditure	4.39	10.29	6.12
Total deficit ..	—2.61	—3.14	—2.12

(As the accounts have not yet been closed, the figures for 1953-54 are not given.) The sum of Rs. 12.71 lakhs merged in the general balances will have to be set off against the excess expenditure for the present.

[Note.—An asterisk (*) at the commencement of a speech indicates revision by the Member.]

II.—ANNOUNCEMENT BY THE HON. THE CHAIRMAN *RE* NOMINATION OF SRI A. GAJAPATHY NAYAGAR TO BE ONE OF THE PANEL OF CHAIRMEN.

MR. CHAIRMAN :—“ I have to announce to the House that, under rule 15 of the Madras Council Rules, I have nominated Sri A. Gajapathy Nayagar to be one of the Panel of Chairman for the sixth session of the Legislative Council under the Constitution in the place of Sri M. Satyanarayana resigned.”

III.—GOVERNMENT BILL.

THE MADRAS GENERAL SALES TAX (DEFINITION OF TURNOVER AND VALIDATION OF ASSESSMENTS) BILL, 1954 (L.A. BILL NO. 19 OF 1954)—*cont.*

* SRI T. M. NARAYANASWAMY PILLAI :—“ Mr. Chairman, Sir, with some reluctance I oppose this Bill which has been brought forward to define ‘ turnover ’ and to validate certain assessments and collections. I have objections to both the objects of the Bill. The bringing in of this Bill has been necessitated by the recent judgment of the High Court. If the reasoning of the High Court is borne in mind, I am sure the Government would not have come forward with a Bill of this kind. The objections to follow the judgment of the High Court are said to be that there are a large number of cases in which assessments will have to be refunded and

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there are also other difficulties. The Hon. Minister was not pleased to take us into his confidence and take us through the difficulties. I am not myself impressed by the supposed difficulties urged on us. One of the difficulties is said to be that people might have since died. That is all the better for the Government. Another difficulty urged is that the parties might have left the place. It is still much better for the Government. No other difficulty has been put forward. Even if it should come to a question of refunding all the amounts illegally collected, the Government should set a better example by trying to return all the amounts collected illegally. As a matter of fact the question of refunding will not cause difficulty in practice. After all, we are not going to refund all the illegal assessments made since 1939. We are going to return only assessments for which applications are made. Applications for the return of amounts cannot be made if they are time-barred. Even in respect of those applications which are within the limitation period, it is not as if everybody entitled to the return of the amount will apply for it. Therefore I am not impressed by the difficulties urged by the Government. Even if there should be difficulties, the Government should be the first person to set an example in the matter of returning payments collected illegally. No argument to justify this Bill will avail.

“ My next point is that the Bill is inconsistent and illogical. The Government want not only to retain the collections but to validate the illegal assessments. They want to validate all those assessments made before the 31st March 1954 on the ground that the sales tax collected until then formed part of the turnover, but after 1st April 1954, the Government say that the sales tax collected would not form part of the turnover. That is to say, the Government are ready to follow the judgment of the High Court in regard to assessments made after the 1st April 1954, but do not want to follow the judgment in regard to assessments made prior to that date. Sir, I can understand the Government if they say that the judgment of the High Court is wrong, and that they are taking steps to undo that wrong. On the other hand, they concede that the view taken by the High Court is correct. Having taken up that view of the law, and providing for its observance from the 1st April 1954, it is illogical and inconsistent to follow a diametrically opposite view in respect of assessments made prior to 1st April 1954. Let the Government make up their mind and say either the High Court judgment is wrong or that it is right. If the judgment is right they must follow the judgment in its entirety. There could be no *via media* in this matter. Therefore it is I say that the view of the High Court is right, and that the Government are right in saying that the view of the High Court is correct. The reasoning of the High Court seems to be that it is a tax on tax already recovered, and, therefore, this Government have no power to levy a tax on tax. That is the way in which the High Court has proceeded. This argument is not refuted. If we follow the

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lists of the Union and the States and also the Concurrent List, we will see that nowhere there is provision empowering the State to levy this sort of tax. The Government have no doubt power to levy a tax on sales or purchases of goods, but they cannot enforce a tax of this nature. This view is reinforced by the scheme and structure of the Madras Sales Tax Act.

“ Sir, in this connexion I would like to invite the attention of the Government to Section 8-B of the principal Act which has been allowed to stand as it is. It has not been repealed. Under that section the dealer is allowed to collect the tax and pay it to Government. In this scheme the place occupied by the dealer is that of an agent to the Government. Therefore, the tax collected by the agent cannot form part of his turnover. (Interruption) The Government seem to have proceeded on the assumption that the dealer was only an agent of the Government.” 3 p.m.

THE HON. SRI C. SUBRAMANIAM :—“ Sir, the hon. Member's argument is that the merchant who pays the tax is just like an agent of the Government. Is that position correct legally, I would like to ask him.”

* SRI T. M. NARAYANASWAMY PILLAI :—“ I am not here sitting in judgment over the pronouncement of the High Court. That kind of prerogative may rest with the Government. Now, I am only questioning the view taken by the Government. According to the view taken by the Government themselves, and the view which the High Court has taken, the dealer is only an agent of the Government. Otherwise they need not provide for the return of the amount. Suppose he collects something else in excess. He has them to return the excess collection. If he were not an agent, could he be compelled to do that?”

THE HON. SRI C. SUBRAMANIAM :—“ If the dealer is in the position of the agent and he does not collect the tax, then can we say he is only an agent and he has not collected the tax and therefore he is not liable to pay the tax?”

* SRI T. M. NARAYANASWAMY PILLAI :—“ The dealer is under two liabilities. The fact he is asked to pay the collections made by him (by negligence) to Government is different from his liability in regard to returning the money collected by him in excess.”

THE HON. SRI C. SUBRAMANIAM :—“ That is why I submit the conception of the dealer as an agent of the Government in this case is not quite correct. The dealer has to pay the tax. How he makes it up, whether he collects it from the purchaser or pays it himself out of his pocket is of no concern to the Government. Government levy the tax and the dealer has to pay.”

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* SRI T. M. NARAYANASWAMY PILLAI :—“ The Hon. the Finance Minister is too late in making up his mind. He ought to have considered this matter when the Government thought of bringing in such a Bill. I think the Government have adopted the argument of the High Court and accepted the view that the dealer is only an agent.

“ Sir, what I was anxious to say is this. What is the object of validating the assessments and the collections already made? It is to enable the Government to keep the money with them. Suppose the person who is entitled to have the money refunded, asks for the refund of the money, then that person will again take the matter to the High Court. If such a suit is filed what will be the final decision of the High Court with regard to this Bill? If the Government follow it in that light I am almost sure that in addition to the arguments furnished by the High Court judgment, the Government will be furnishing an additional argument by passing this Bill. By bringing in this Bill the Government have accepted the argument of the High Court. The only reason for the Government not following that argument is their desire to keep the money with them. Can the Government give effect to this desire so long as the Act stands as it is and so long as section 8-B is there? The High Court will then say that this legislation is *ultra vires*. What are the grounds on which the Government feel sure that this Act will not be called in question and declared by the High Court null and void? No doubt the phrases and words used in the Bill are wide enough but this cannot be an effective remedy so far as the High Court is concerned. The very object of the Government to validate the assessment and the desire to keep the collections would be made ineffectual in the face of the present Bill and the arguments already furnished by the High Court. According to me it is a tax on tax and it cannot stand. The very object the Government have in view would be defeated by the Bill if it is to be passed in the manner in which it has been brought before us. Therefore I oppose the Bill.

“ I find two or three amendments given notice of by hon. Members, Sri Bhashyam, Sri Balasubramanya Ayyar and Sri Gurunandan Row. They seem to make a distinction between the validity of the judgment and the necessity of the Government to keep the collections with them. They do not want to go to the extent to which Government want to, namely, to validate all the invalid assessments previously made. They sympathise with the Government and try to help the Government to keep back the amount collected. I do not know how far they will succeed. Anyway the view taken by all these lawyers seems to be that it is wrong on the part of the Government to say that they would be making valid all the assessments merely by effecting a change in the definition of ‘turnover’. If the turnover cannot include

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the sales tax already collected, how can the Government make that turnover to include sales tax also by simply quibbling with the definition of 'turnover'? Therefore I oppose the Bill."

* DR. V. K. JOHN :—" Mr. Chairman, Sir, I regret to say that this is an unparalleled piece of legislation and reflects great discredit on the Government which has brought in this Bill. It is unconstitutional, illegal, inequitable, unjust and *mala fide*. I can prove the *mala fides* in bringing this piece of legislation because one ground stated in the Statement of Objects and Reasons is that the collections were *bona fide* and therefore the Government do not want to refund the collections made so far. Now what are the facts? In 1939 the Government passed the Sales Tax Act. Section 2 (i) of that Act lays down 'turnover' means the aggregate amount for which goods are either bought or sold by a dealer..'' Note the emphasis is on 'the sale or purchase of goods' and not on the collection of taxes. Section 3 provides that every dealer shall pay the tax on his total turnover. It is elementary knowledge that tax collected by the dealer from the purchasers cannot be considered as part of the turnover. But the Government have been making among many illegal things, this illegal collection of tax on tax. It is stated that the Government did this *bona fide*. So long ago as 23rd June 1949 an hon. Member in the Legislative Assembly raised this question and the then Finance Minister replied that if this was illegal, it would have been challenged in a court of law long ago. But Government would not take legal advice, because I do not think any man with any knowledge of law could have advised the Government that a tax could be made part of the turnover. Then cases were filed in the District Courts in South Kanara and Tirunelveli on 31st November 1952 and 12th April 1953. It was decided that it was illegal to have a tax on tax. Then on 29th February 1952 the Madras Sales Tax Appellate Tribunal decided that the Government had no power to collect sales tax on sales tax. This was taken by the Government in revision to the High Court. The High Court upheld the decision of the Tribunal on 7th January 1954. Sir, it is necessary to mention to this House that the High Court decided two points. The first point was that, having regard to the clear provisions of the Madras General Sales Tax Act and the rules framed thereunder, the tax collected by a registered dealer under section 8-B of the Act did not constitute part of the turnover and therefore was not liable to be taxed again. The second point they decided was that, where a dealer was empowered under the law to pass on the sales tax to the purchasers and to collect and pay it to the Government, what he was permitted to so collect under the law would continue to retain its character as a tax and it would never form part of the purchase price. The High Court has made this very clear in its judgment on the 7th January 1954. Apparently, on the advice of their Legal Advisers this Government did not

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THE MADRAS GENERAL SALES TAX (DEFINITION OF
TURNOVER AND VALIDATION OF ASSESSMENTS)
BILL, 1954 (L.A. BILL NO. 19 OF 1954)

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take the matter to the Supreme Court. If they had done so, the Supreme Court would have dismissed their appeal. The position therefore is that the District Courts, the Sales Tax Appellate Tribunal, and the High Court have decided it as a very clear principle of law that the Government cannot have a tax on tax. As I said, this kind of taxation is unconstitutional and illegal.

“ The General Sales Tax Act was passed by this Legislature under the provisions of a law corresponding to Article 246 of the Constitution of India which refers to the Seventh Schedule—List II which defines and details the various subjects on which this Legislature can make laws. Item 54 of this list provides for taxes on the sale or purchase of goods other than newspapers. But, nowhere in this list and nowhere in the Constitution has it been laid down that the State Legislature has power to impose a tax on tax. This is absolutely unconstitutional and illegal and it has been declared to be so by the Courts. Though this question has been raised from 1949 onwards, the Government in their anxiety to collect money have been illegally collecting this tax on tax without any authority whatsoever. This was thoroughly illegal and has been declared to be so by the Courts.

“ Now, what is the object of the present Bill? First of all, the Government want to say that the tax collected by the dealer shall be deemed to have formed part of his turnover for purposes of taxation under the General Sales Tax Act. How it could be deemed to be so, nobody can say. But the Government are asking us to say that it forms part of the turnover!

“ Then, Sir, the most clumsy thing is in Clause 3 of the Bill. Clause 3 says that any decision made before the 1st of April 1954 shall not be invalid and all collections of tax will form part of the turnover and will continue to be so even after 1st April 1954 until they are assessed. I can understand the Government saying that they are too poor to pay back what they have collected. Payment of one's debt is a pious obligation laid down under the Hindu Law and I think every Indian must consider it his pious obligation to pay his debts but, the Government, having no conscience, say, ‘ We will not pay our debts.’ I can understand this but what is it that the Government are doing? They go further and say that even though the assessment is made long after 1st April 1954—it may even be two or three years before the assessment is made—they would nevertheless collect the tax on tax. I could have understood it if the Government had said that they had no doubt collected this tax on tax which was illegal and unconstitutional and that they did not want to pay the money back and that they had not got sufficient funds to do so. But the Government say that they are going to collect from the merchants this tax on tax in spite of these decision on turnover till 1st April 1954 which includes the sales tax. It may

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take even two or three years to make these assessments. Are the Government going to collect this tax on tax for all time to come until all the assessments on turnover till the 1st April 1954 are completed? It is therefore not only something which is illegal but it is something which no civilised Government should do. The Government must either take up the position that they have done a right thing or that they have done a wrong thing. This Bill is evidence of the fact that the Government accept the decisions of the Appellate Tribunal and of the High Court! If they have done a wrong thing why should they attempt to collect anything more? After the High Court had pronounced its judgment on the 7th January 1954, they should have stopped the collection of this tax on tax. They did not do so but they want this House to pass this Bill giving them the power to collect this tax on tax for some years to come on the turnover up to 31st March 1954. In other words, not only do the Government not pay back what they have illegally collected but they want to collect the illegal tax on tax hereafter also on the turnover till 1st April 1954. It would take a few more years before the final assessments are made. I say, Sir, that this is not the way in which the judgment of the High Court should be treated or the way in which a civilised Government should treat the merchants. Is it not day light robbery to ask people to pay something which the Government themselves admit is illegal?

“ Even to say that they would not repay the illegally collected amounts, the Government must take up a consistent position. It is a very wrong thing to do even for an individual or an association of individuals. If it is so, how can a civilised Government take up the position that they have done something which is illegal and which has been declared to be illegal by the Courts on an elementary interpretation of the Act itself and yet they would not pay back what they have collected illegally? I think it is absurd. It will reflect discredit on any Legislature to pass into law a Bill which will enable the Government to say that they have collected some money illegally but will not pay it back. Should the Government put themselves in such a position? It is an awkward thing to do, and are we to support this Government? It is an unparalleled piece of legislation. The Government go further and say that not only will they not pay back whatever has been illegally collected but will continue to collect this tax on tax even after the judgment of the High Court in January 1954 for a few more years, whether it be three, four or five years, until the assessments on the turnover up to 1st April 1954 are all complete. I would not say it is madness—it is a harsh term to use—but I should say that no civilised Government should place itself in such a position and I do not think that in the whole history of the Madras Government or for the matter of that of any other Government in India has there been such a thing as this. Are we to allow this Government to pass this Bill into law, and are we to allow the Government to commit this robbery? Are we to

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allow this Government to do something which is illegal? I submit this is a thing which the Government should not do. The reason given that these collections were *bona fide*, I say, is a dishonest one. This question has been raised from 1949. The two incidents which I mentioned happened in the District Courts in 1952 and 1953. The decision of the Appellate Tribunal was in 1952. Still the Government say that the collection of the tax was *bona fide*. Who can believe it? Will any member of the public or any educated man believe that what the Government were doing was *bona fide*? I have no doubt that it is a *mala fide* collection of tax. It is not only unconstitutional but also illegal. But to say that still the Government would be collecting the tax shows great disrespect to the Courts which we have established under our Constitution. No Government should disrespect the Courts. This is a case in which the Government have totally disregarded the decision of the Courts. I submit that this House should not be a party to get this Bill passed. This Bill should not at all have been brought before the Legislature. It is a discredit to this House to pass this Bill. We should not allow the Government to pass this Bill."

* SRI V. GURUNANDAN ROW :—" Mr. Chairman, Sir, the Hon. the Minister for Land Revenue, in moving the Bill, has not chosen to inform us what the judgment of the High Court is which lays down that the levy of tax on tax is illegal. Though the Hon. Minister referred to the administrative inconvenience and difficulties the Government will have to face if they were to refund the tax already collected on the ground that many people could not be found or that some of them might be dead, still he has not chosen to tell us what the real effect of the judgment is. He has not told the House that this Bill is so wide in its scope that it tries to invalidate the judgments of Tribunals and of the High Court and deprives the assessee from reaping the fruits of any decree or judgment that they might have obtained from a Tribunal or the High Court. He satisfied himself by merely saying that it is only for administrative convenience that the Government want to legalise certain assessments. Further, the Hon. Minister has not informed us how many cases are pending either before the Deputy Commercial Tax Officer or the Commercial Tax Officer or the Sales Tax Appellate Tribunal or the High Court in which the assessee has challenged the right of the Government to collect tax on tax. Nor has the Hon. Minister informed us as to how much of the tax will have to be refunded if the pending cases are, as they ought to be, decided in favour of the assessee. I therefore think that hon. Members will agree with me that without all this information it would not be fair for the Hon. the Minister to expect us to support this Bill.

" Sir, it is necessary that hon. Members should know the reasons given by the learned Judges who held that the tax collected by a dealer should not be included in his turnover. The

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judgment was delivered by the High Court on a batch of petitions filed by the Government—not by the assesseees—against the order of the Sales Tax Appellate Tribunal constituted under the General Sales Tax itself, holding that the collection of tax on tax was illegal. The decision of the Tribunal was as early as in 1952. The Government, instead of accepting the consistent decisions of their own Tribunal presided over by experienced and eminent I.C.S. Officers with vast judicial experience, appealed against that decision and the High Court delivered its judgment on 7th January 1954 upholding the decision of the Tribunal that a tax on tax should not be levied. It is necessary to set out these facts, because I find that in the Statement of Objects and Reasons appended to the Bill it is stated that the assessments and levy were made in good faith and have to be legalized. I should like to say that I cannot understand what good faith there can be when the Government refused to accept the decision of their own Tribunal given in 1952 and continued to levy the tax till 1954. It is not as if a particular Deputy Commercial Tax Officer or a Commercial Tax Officer, on his own interpretation of the Sales Tax Act, thought that the tax collected by a dealer should not be included in the turnover. In this connexion I wish to bring to the notice of hon. Members that the responsibility for the collection of tax on tax lies fully and squarely on the shoulders of the Government themselves and not on any individual officer. I invite the attention of hon. Members to the Madras Commercial Taxes Manual, Volume I, which is a manual published under the authority of the Board of Revenue (Commercial Taxes). I am quoting from a Government publication. On page 143, there is Standing Order No. 21. The heading given is 'Assessment Procedure'. Standing Order No. 21 (b) (ii) says: 'Amounts to be added to the price of articles'. The following items when collected by a dealer should be included in his turnover for the purpose of assessment:—

- (1) Sales-tax—(B.P. Rt. No. 510, dated 3rd February 1944)
(B.P. Rt. No. 4149, dated 26th June 1948)
- (2) Surcharge—(B.P. Rt. No. 1625, dated 19th March 1948)

This clearly shows that there can be no question of *bona fides* on the part of the Government in this matter. On the contrary, it was the definite instruction of the Government that the assessing authority can collect the tax on tax. Will the Government be pleased, at least now, to place before this House the Board's Proceedings referred to in the said Standing Order and how such instructions came to be issued after the matter was once dropped in or about the year 1941? How was it that a circular was issued by the Board in 1948 to collect tax on tax?

"Then, the decision of the High Court, as I understand it, is not based upon the fact that the definition of the term 'turnover' does not entitle the Government to levy a tax on tax but upon the fact that the State Legislature can only levy a tax on

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the sale or purchase of goods under the Constitution and the levy of a tax on tax would be *ultra vires* of the Constitution unless it can be shown that the tax collected by the dealer formed part of the consideration for the sale. The main basis of the judgment is that because the tax collected does not form part of the consideration for the sale, it cannot be considered to be a proper tax and that it is an illegal tax. The learned Judges of the High Court made a differentiation. They made a differentiation between a registered dealer, i.e., a dealer registered under section 8-A of the Act and an unregistered dealer. In their judgment they have stated that in the case of an unregistered dealer Government can collect a tax on the supposed tax, if he has collected it, because he adds the sales tax to the price. He is not obliged to pay sales tax. He is not obliged to collect it and give it to the Government and therefore, it formed part of the consideration for the sale. So, an unregistered dealer alone could be taxed on the total value because he does not make any differentiation, nor is he obliged to pay the tax to the Government. That is my understanding of the judgment.

“ The learned Judges have specifically held that under section 8-B of the Sales Tax Act, a registered dealer was on pain of penalty to pay the Government whatever he has collected as tax from the persons to whom he sold the goods and hence, it can never be suggested that the tax collected by him which is to be handed over to the Government can form part of the consideration for the sale of the goods. Therefore, how can the Government collect a tax on tax? That is the most important reason on the basis of which the High Court delivered the judgment. That being the case, Sir, I do not understand how, by merely changing the definition of ‘ turnover ’, we can change the character of the transaction. How does it to-day form part of the consideration, even if the definition is changed? The reasoning of the Court is that because it does not form part of the consideration for the sale, it is invalid. Now, even to-day as long as section 8-B is not amended, which section makes it obligatory upon a dealer on pain of penalty to collect the tax and give it to the Government as a trustee, that position is still maintained. I do not understand how this mere jugglery of verbal change in the definition will help the Government.

“ There is also another point which I cannot understand. How can a definition be changed for a certain period in the past? A definition is a definition for all time. We cannot say that the definition holds good only for a particular period and the definition does not hold good thereafter. Therefore, I think, Sir, that whatever the intentions of the Government may be, the draftsman of the Bill has failed to carry out the intentions of the Government, and even to-day the judgment of the High Court will be applicable to all cases, and Government cannot collect a tax on tax.

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“ Then, Sir, frankly I must also say that this Bill is immoral. Government make a man go to Court and when he gets a decision in his favour, the Bill before us says that that decision is a mere scrap of paper. Of course, small mercies are shown that costs are to be paid to him. Even if a man goes to Court and gets an order in his favour, the Government say he is not to get anything. The Government say that even though the High Court has held the collection of tax on tax is illegal, they will not return it to the dealer. That is the main basis of my criticism regarding the immoral nature of the Bill which seeks to validate something which is really wrong.

“ Then, Sir, constitutionally also I think this Bill is liable to be attacked. The Constitution has definitely stated in Article 265 that no tax shall be levied or collected except by authority of law. I must say that when once such a tax is collected and it becomes illegal under Article 265, I do not understand how this Legislature can pass an Act which makes valid something that is unconstitutional. How can we validate something which is against the provisions of the Constitution? The collection of a tax on tax becomes invalid because it goes against the right given to a citizen that no tax shall be levied upon him except with the authority of law. Can this Bill be said to be a law which gives authority to collect? No. The collection has already been made, and that is illegal and unconstitutional. How can this Legislature validate a collection or a levy which is already not only illegal but unconstitutional?

“ Another ground of objection would be that this is a collection of tax on tax. This is a matter which is not enumerated in either the State List or the Concurrent List, as my hon. Friend, Dr. John, has stated. Government are empowered to levy a sales tax, i.e., a tax on the sale or purchase of goods except newspapers. Even after this Bill is passed, can we consider this a tax on sale? I respectfully submit that this Bill cannot be taken to mean that this is a tax on sale. It definitely means a tax on tax. Government speak of tax collected by the dealer and made over to the Government and say that it is part of his turnover, i.e., part of the consideration for the sale. This Bill does not attempt to amend section 8-B. By amending the section we can at least deem the tax collected as part of the consideration for the sale, as in the case of an unregistered dealer. But, it does not do that. Therefore, I submit that this is also a ground on which this Bill could be challenged.

“ Another ground of objection is about the question of the Act applying to pending cases. Sir, I should think that when the Bill says that the proceedings of the Courts shall be void, it amounts to this Legislature exercising a judicial power. The Bill in effect says that all those cases which are in favour of the assessee are dismissed. Sir, I consider that this Legislature can only state what the law is. We are not empowered and we do not possess the power to interpret the law in particular cases and say, ‘ No, this case must be decided in that fashion ’. We cannot say that this case

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must be dismissed or that that case must be allowed, which is in effect what clause 3 of this Bill purports to do. Sir, I am not against validation of assessments as such. I could perfectly understand the Government not desiring to allow assesses, who have not filed any appeals against their assessments and who have been satisfied with this collection of illegal tax, to start litigation merely because there is the judgment of the High Court. This may be perfectly justified and the Government may desire it. But, to deprive the rights of those people, who have already questioned the matter in Courts and won their cases, will not only be unconstitutional but also immoral. I appeal to the Government that they must respect the decision of the High Court not only from 1st April 1954 as they say, but before that date also. By doing so, the Government will be setting up a healthy precedent. Government must set an example to others and obey the judgment of their own Tribunals and the High Court. As far as the present Bill is concerned, because of its wide scope I am compelled to oppose it."

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* THE HON. SRI C. SUBRAMANIAM:—"Mr. Chairman, Sir, I am only intervening in the debate and not replying to the debate. My Colleague in charge of Revenue will finally make the reply. I want to point out that there are two aspects to this question. One is whether this legislation is valid. The validity of the legislation is the first point to consider. The second point, which was raised by the hon. Member Sri V. Gurunandan Row, is the justness of this legislation. As far as validity is concerned, the Bill has been attacked on the ground that this will be a tax on tax. My respectful submission is that it will not be. If we go through the General Sales Tax Act, we will find that there is no liability cast on the seller to collect any tax. If the dealer happens to collect anything as tax, certain other things flow from it. The seller is not liable to collect the tax from anybody. What is prescribed is that sales tax shall be assessed on the turnover as such. The question, therefore, arises as to what is 'turnover'. If we go through the judgment of the High Court, we will find that it is stated that the **Act, as it stands**, does not permit the inclusion of the tax also as forming part of the turnover. It is only by a direction given under the Board's Standing Orders that the tax collected by the **dealers** is included in the turnover. The lacuna is that the Act, as it stands at present, does not permit the inclusion of the tax in the definition of turnover. The decision can be based only on this point, namely, that the Act, as it stands, does not permit the Government to include the tax as part of the turnover. The second question is, if that is the decision, cannot this Legislature include the tax as part of the turnover by the insertion of a specific provision in the Act? My submission is it can. Because any dealer can mention any number of items in a Bill, e.g., services rendered, price, etc. What the consumer pays in total, is the question. That is the amount for which he gets the thing. A bill may show charges for various items, namely, price,

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services rendered; rent of the premises, etc. Many items may be charged for. All these charges have to be paid for by the purchaser. Therefore it is not as if this tax does not come within the consideration the purchaser has to pay. As a matter of fact, in the Bengal Sales Tax Act, to which reference has been made in the judgment itself, we will find that there is no such thing as sales tax collected by the merchants. Whatever is collected by the merchant is taken as the turnover. If there is a liability cast upon the seller to collect the tax, whether he is willing or not, then, of course, the question of agency comes in. Here it is not so. There is no agency at all. (Interruption by the hon. Member Dr. V. K. John.) The seller may collect not only this tax but also something more. There is no provision in the Act entitling him to collect this tax. What is laid down in the Act is that he has to pay a certain tax on his turnover. Taking that view into consideration, it is open to this House—it is valid and it will be within the powers of this House—to define the 'turnover' to include whatever amount the purchaser pays to the dealer, whether it includes sales tax or any other charge. It is not as if sales tax should be levied at six pies in the rupee or at three pies in the rupee. It is open to the dealer to charge even one anna. But the point is whatever the dealer collects is his turnover, and that is his sale price. As far as our powers are concerned, my respectful submission, in spite of the very big guns thundering from the other side, is that it is competent for this Legislature to include in the turnover whatever is collected by the dealer at the time of making the sale, and bring that under the definition of 'turnover'.

DR. V. K. JOHN :—"Then why not say that the High Court judgment is wrong?"

* THE HON. SRI C. SUBRAMANIAM :—"I shall come to the judgment of the High Court. The High Court is proceeding on the basis that the definition of 'turnover' as it stands at present, does not entitle the Government to treat the tax collected by the dealer as coming within the definition of 'turnover' only by the issue of an executive instruction. If we want to include the tax in the turnover, we must change the scheme of the Act. That is the reasoning in the judgment. The hon. Member will see this if he goes through the judgment. My respectful submission is that we are competent to do it. And if we are competent to do it, the next point is, can we do it with retrospective effect? It is now a well-understood, well-established, and well accepted principle that if the House has got the power to pass legislation for the future, it can pass legislation with retrospective effect also. Series of decisions have dwelt upon this point. Series of judgments have accepted that the Legislature has got the power to legislate with retrospective effect. Therefore, the question of giving retrospective effect need not weigh in our minds. If we have got the power to change the definition of the word 'turnover' to include the tax, then we

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also get the power to give retrospective effect to that decision. We need not be afraid on these two grounds. *Prima facie* it appears to me that this is valid but certain Judges may take a different view. Whatever may be the ultimate result, to me it looks as if we are not doing anything illegal, we are not doing anything out of the way which we are not entitled to do, and for which we do not have the power. If ultimately the Supreme Court thinks that this is wrong, I would not be surprised. After a full examination of the spirit of the whole thing, as it stands, and as we are advised by our law officers, I am of the opinion that the Legislature has got power to include the tax in the 'turnover'. Having got that power, it has got power to give retrospective effect.

"I now come to the aspect whether it is just to do it. Apart from the justness of it, as men administering the affairs of the people, we have to take into consideration the practical and administrative difficulties also. Will it be good at this stage to start making refunds on applications covering the last three years—within the limitation period? Dr. John says that it is a pious obligation. Pious obligation does not permit of limitation. It should be with reference to the whole collections made from the commencement of the Act, and not with reference only to the last three years. The tax will have to be refunded for the whole period from the commencement of the Act. If that be so, will it be practical and administratively possible? With reference to each person claiming refund, we will have to apply our minds to see whether he is the person who paid the assessment, whether he is entitled to the refund, and what is the amount of refund. All these things will lead to so much of administrative difficulty. The time and expenditure involved in this process would be incommensurate with the results to be achieved. Therefore the Government, after considering the whole thing from the administrative and financial points of view, have come to the conclusion that it will not be advisable to refund. That is why, Sir, retrospective effect is sought to be given.

3-50 p.m. "As regards the justness of the thing, I can very well understand if people were not aware of it, if there had been an assurance that this would not be included in the turnover and if Government had suddenly changed the definition and said that sales tax would be included in the turnover, and that they would give retrospective effect to it. Nothing of the kind. Rightly or wrongly, the Government issued executive instructions saying that the tax should be included in the turnover and 99.9 per cent of the traders and sellers have been following those instructions and including the sales tax in the turnover and they have been collecting and paying the tax on that basis. We are not taking people by surprise. We thought that the provision as it stood permitted us to include sales tax in the turnover. The Board also took that view. It might be that it was a wrong view. But it cannot be said that it was not bona fide. If any one person took that view

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and if a few officers of the Government took that view then the bona fides could be questioned. But the Government as a general policy issued instructions and they were followed. Therefore it is not as if we are coming here without notice whatsoever for the first time and we want to include the sales tax in 'turnover.' If the traders had no knowledge of the intentions of the Government, if they had absolutely no idea of this, and now if they are being asked to pay, then it might work hardship. Even from 1944 instructions have been issued that the tax should be included in the turnover and they have been followed. Persons knew they were to pay the levy on the turnover including the tax, and so they were collecting tax from the people on turnover calculated on that basis.

"Sir, another point was made. It was said 'it might be all right with respect to those who have not fought this question. But with respect to those who fought this out and who went to courts, they should be given relief'. I can very well understand if exemption is asked for all. Simply because a few persons were cantankerous enough to go to court and fight the issue, that is no sufficient ground to give them a special advantage. If the hon. Member Sri Gurunandan Row says that all should be given that exemption I can understand. But I cannot agree to a discrimination being made between persons who acquiesced in and those who fought against the Government. If exemption is to be given it should be given to all and if it is not to be given it should not be given to anybody. It is with that idea I say this and not with a view to attack the judgment of the High Court. People who went to court were generously compensated by way of costs and other things. Therefore we cannot make distinction on the basis of decrees awarded or passed.

"Therefore my submission to hon. Members of the House and especially to the legal luminaries is that we are not going outside the constitution and that we are not going beyond our powers in bringing this Bill before this House. We are just, and administratively it is the most convenient thing to do. Having taken into consideration all the aspects of the matter, we have come forward with this measure. I hope it will be held valid by the Courts, the High Court and also the Supreme Court."

SRI MOHAMED RAZA KHAN :—"I want a clarification from the Hon. Minister. For all the collections made in the year 1953-54 the final assessment is made after 1st April 1954. What will be the method adopted by the Government in those cases?"

* **THE HON. SRI C. SUBRAMANIAM** :—"If the hon. Member will read the definition of the term 'turnover' as it applies to sales made up to 1st April 1954 he will find that it includes the taxes collected. The method of assessment is laid down in the general law of sales tax."

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* SRI K. BHASHYAM :—“ Mr. Chairman, Sir, so far as the Government are concerned, very hard and harsh words were used by hon. Members opposite. They called into question the sincerity, the honesty, and straightforwardness of the Government in allowing such a thing to be done which has been declared to be illegal. Sir, I think I may say in justification of the Government's action that as a matter of fact in the early days even the hon. the Deputy Leader of the Opposition, Dr. John, was having a doubt whether this tax could be called a consumers' tax or a sales tax. I think he has more than once expressed the view that it is not a sales tax but a consumers' tax. Therefore, I submit that the idea was prevalent at that time that it was the consumer who paid it and not the seller. Therefore when this idea was prevalent in those days when the sales tax was new, and the question was whether it was a sales tax or a consumers' tax, there was justification for the Government and some people coming to the conclusion that as a matter of fact in the turnover the tax imposed also may be included. There was justification for including the tax paid by the consumer in the price paid by him for the article. This is also justified by the fact that in other provinces also they had included this. By way of caution they really included this by a more careful wording of the Act itself. Therefore, Sir, there is no use in calling into question the sincerity and the honesty of the Government which has no body to kick and no soul to condemn but is impersonal. We must take it with all its faults and certainly give Government credit for honesty of purpose. In respect of all matters the Government take suitable advice. And it is true in some matters they act on their own initiative. But certainly to impute dishonesty to Government, is something which I would not agree to.

THE HON. SRI C. SUBRAMANIAM :—“ They did not mean it seriously and that is why I never referred to it.”

* SRI K. BHASHYAM :—“ Well, the Hon. Minister must know Dr. John better than I do, though I have longer acquaintance with him than the Hon. Minister. But still I would like to say that the impression that the Government are dishonest or immoral would gain ground, if one reads the speech of the hon. Member Dr. John. Things will be said of the Government which will not be quite complimentary to the Government. Therefore I want in the first instance to say a few words to justify the Government in their action in previous years.

“ Sir, this has been going on from the year 1948. Why did not the hon. Member Dr. John who is such a great lawyer, who has appeared on behalf of such a large number of commercial people, take up this point earlier? (An hon. Member: He was State Counsel.) That was only for a few months, or for a year and no more. All his life he has been pleading for and acting on behalf of commercial people and big commercial houses in the City. Why did he not point this out earlier? Somebody went to the High Court

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and the High Court has held that this is something which ought not to have been done. Therefore this should not make him use exaggerated language and call into question the honesty and sincerity of the Government. This certainly is not quite proper on the floor of this House, a House which consists of Elders and which is supposed to take things more coolly than the other House.

“ As regards the illegality of the action of the Government also I should like to point out on the floor of this House that it is something which has to be decided by the Court. The Government cannot act upon their action being called into question by a single person or by a dealer somewhere or even by a subordinate tribunal like the Deputy Commissioner or the Commissioner or the Appellate Tribunal taking one view or the other. They must wait till an authoritative pronouncement is made by a court on which alone they can take action. Simply because this has been questioned in some lower court or subordinate court by some dealer or other that alone cannot induce the Government to act in a particular manner. Because a case was filed in some lower court in 1948 or 1952 that alone cannot make the Government desist from collecting it. We cannot also call into question the action of the Government in collecting the tax. In January 1954 the High Court said that this was wrong. Immediately the Government have come up with this legislation. If at all there has been any delay, there has been a delay of only three months, and there are two reasons for this delay. After all the Government cannot act all at once. The Government must get an authentic copy of the judgment from the High Court. Then they have to consult their Legal Advisers and the departments concerned. This period of three months is therefore no delay whatsoever. 4 p.m.

“ There is also another factor which I would like this House to take into consideration. We have been going on budgeting on the basis that the sales tax collected also formed part of the turnover on which the assessments were made. The Government have been going on from year to year basing their Budget on this kind of calculation and they have been spending also on this basis. They had therefore to wait till the 1st of April 1954 which is the beginning of the financial year, and the Government do deserve some credit for doing things in a proper way.

“ Sir, I would like to point out one other fact. The question is being asked as to why the Government should not give away all the money if they really think that it has been illegally collected. The question is whether the Government should actually refund the amounts. As I said before, it is a question of budgetary provision being made and money being spent on the basis that turnover included also the tax collected by the dealer. If the Government have spent the money, how could they give it back? There is this practical difficulty. In respect of this matter, the Government's action could be justified in another way also. Only in respect of

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cases where a person has, for the purpose of impugning the assessment made, gone before the courts in the proper manner, he is entitled to a refund. In section 18-A of the General Sales Tax Act it is laid down that no suit or proceedings shall be instituted in a court against any assessment made under this Act except it be as expressly provided for in the Act. Therefore, if anybody wants a refund he must file an appeal to the Commissioner of Commercial Taxes within the prescribed time. He has then to appeal to the Appellate Tribunal and he may also have to go before the High Court. Only in respect of such cases, the Government are bound to refund the excess. If nobody has raised any objection, the Government need not repay. In fact it will be a gross dereliction of duty on their part and they will be signing away money which they need not except in the manner provided for in the Act. I, therefore, think the Government are justified in not refunding the money. If anybody questions this, I shall certainly defend the Government to the utmost of my ability. I think that what I have said would have convinced hon. Members. The collections which have been made are collections which need not be refunded at all. What the Government propose to do further is more important. The provisions of this Bill go further than this. They go to the extent of saying that not only all the collections made so far will not be returned but that 'all orders passed, and all action taken by any officer in the exercise or purported exercise of jurisdiction or powers conferred by the principal Act, and all judgments, decrees or orders pronounced by any Tribunal or Court in the exercise of its jurisdiction or powers with respect to matters in the principal Act, on the basis that amounts collected by a dealer by way of tax under the principal Act before the 1st April 1954, formed part of the turnover of the dealer are hereby declared to have been validly made, passed, taken or pronounced, as the case may be.' This is what clause 3 of the Bill says.

"I will take each portion of the clause separately. Suppose for the year 1953-54 assessments have been made in certain cases while certain other cases assessments have not been so far made because their accounts are being scrutinized. In respect of the dealers in whose cases assessments have been completed, they are bound by these assessments which have been made on the basis that the tax which they have collected will also be included in the turnover. What is to happen in regard to those whose cases are pending investigation? Will it be right if these people escape paying the tax on tax? This is a matter on which I would like the Government to throw more light.

"Suppose there are decrees or judgments pronounced by the Deputy Commissioner for Commercial Taxes or the Appellate Tribunal and the persons who have raised this point have been able to persuade the officers presiding over these courts that this tax on tax was illegal. What is to happen in such cases? Suppose in some cases the proceedings are still pending and no judgments have

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been delivered. Are these persons to go scotfree? These difficulties are therefore bound to arise in the working of this clause 3. We will be leaving out certain people but bringing within its scope certain other people who do not deserve to be so badly treated. The persons who will be penalized by this clause are those who have submitted their accounts regularly, paid the assessments regularly and who have not been protracting litigation by appealing to the Deputy Commissioner, the Sales Tax Appellate Tribunal and the High Court. But those who have been protracting litigation will be free from paying this tax. What I do wish to point out is that there is an essential injustice in making clause 3 so wide and so sweeping in its scope and that it will really cause some injustice. Therefore, I would like the Government to take some more time, if possible, and come forward with some sort of an amendment which will be really helpful in solving the difficulties. In addition to the clause being of such a sweeping character the discriminatory nature of the clause also we have to take into account. As I said yesterday in respect of the Land Revenue Surcharge Bill, I would implore the Government to appoint a small committee. Let that committee take some time, and find out how best this clause can be redrafted so as to bring within its scope the persons who are entitled to some relief and exclude those who are not entitled to any relief taking into consideration the inconvenience, etc., to the Government in refunding the amount."

SRI O. P. RAMASWAMI REDDIAR :—"கனம் தலைவர் அவர்களே, இப்பொழுது விற்பனை வரி விஷயமாக சர்ச்சை நடந்துகொண்டிருக்கிறது. ஹைகோர்ட்டு ஜட்ஜ்மெண்டு கொடுத்த பிறகு சட்ட நுணுக்கத்தில் என்ன தவறுகள் இருக்கின்றன என்பதை சட்டப்பையின் மூலமாக சரிப்படுத்த வேண்டுமென்ற முறையில் அரசாங்கம் அதற்குப் பிரபத்தனம் எடுத்துக் கொள்ளுகிறது. இன்னொரு பக்கம் 'அது ரொம்ப நியாயமற்றது' என்ற முறையிலே எதிர்க் கட்சியினர் வாதாடிக்கொண்டு, 'அது ரொம்பத் தவறு' என்ற முறையிலே பேசப்படுகிறது.

"இந்த வரிக்கு 'விற்பனை வரி' என்று பெயர் கொடுக்கப்பட்டிருக்கிறது. ஆனால், அது யாரால் கொடுக்கப்படுகிறது என்று பார்க்கும்போது வாங்குகிறவர்கள்தான் அந்த வரியைக் கொடுக்கிறார்கள். ஆகையினால், நடைமுறையில் என்ன நடக்கிறது என்பதைப் பார்க்கவேண்டும். சட்ட நுணுக்கங்களைப்பற்றியும், சட்டம் எப்படிச் செய்யப்பட்டிருக்கிறது என்பதைப் பற்றியும் அதில் என்ன Flaw இருக்கிறதென்பதைப்பற்றியெல்லாம் இப்பொழுது பேசிக்கொண்டிருப்பதைவிட, என்ன நடந்திருக்கிறது என்பதையும், அதற்கு என்ன பரிகாரம் தேடவேண்டும் என்பதையும் பார்க்கவேண்டும். அப்படிப் பார்க்கும்போது, இது வாங்குவதற்குக் கொடுக்கக்கூடிய வரியாக இருக்கிறதேயொழிய, விற்பனைவரி அல்ல. 'விற்பனை வரி' என்ற பெயர் மாத்திரம் இருக்கிறது. ஆனால், வாங்குபவர்கள்தான் அந்த வரியைக் கொடுக்கின்றார்கள். 'வரிக்கு வரி வாங்கிவிட்டார்கள், அது திருப்பிக்கொடுக்கப்படவேண்டும்,' என்று சிலர் சொல்லுகிறார்கள். வாஸ்தவந்தான். அதில் சில தவறுதல்கள் இருக்கலாம். ஆனால், அதற்கு அரசாங்கம் என்ன செய்யவேண்டும்? சட்ட நுணுக்கங்கள் தெரிந்தவர்களை வைத்துக்கொண்டு, அட்வகேட் ஜெனரலையும் வைத்துக்கொண்டு, சர்க்காருடைய சட்டக்காரியதரிசியையும் வைத்துக்கொண்டு, இன்னும் இது சம்பந்தப்பட்டவர்களையும் வைத்துக்கொண்டு கவனித்து சட்டங்களைச் செய்ய வேண்டும். அதைச் செய்வார்கள் என்றும் நான் நம்புகின்றேன்.

[Sri O. P. Ramaswami Reddiar] [14th May 1954]

“அதேசமயத்தில் இப்பொழுது என்ன செய்யவேண்டியது என்பதையும் நாம் யோசிக்கவேண்டும். பணம் வசூலாகிவிட்டது; பட்ஜெட்டில் சேர்க்கப்பட்டு, அதைச் செலவுழிப்பதற்கு நாமும் அனுமதி கொடுத்திருக்கிறோம். எல்லாம் செலவிடப்பட்டுவிட்டது. ஆனால், இப்பொழுது அந்தப் பணத்தைத் திருப்பிக்கொடுக்கவேண்டும் என்று அதைப்பற்றி சர்ச்சை நடந்துகொண்டிருக்கிறது. இப்பொழுது அதைத் திருப்பிக்கொடுக்க முடியுமா? முடியாது. நடைமுறையில் என்ன நடத்திருக்கிறது என்பதையெல்லாம் நாம் பார்க்கவேண்டும். ஆகையால், இப்பொழுது அரசாங்கம் சட்டத்தின் மூலமாக அதைச் சரிப்படுத்தவேண்டும் என்று நினைப்பது நியாயம் என்று நான் சொல்லுகிறேன்.

“ஏற்கெனவே வசூலித்த தொகையைத் திருப்பித்தரவேண்டும் என்று சொன்னால், அதை யாருக்குக்கொடுப்பது என்ற பிரச்சனை எழுகிறது. யார் விற்கிறார்களோ அந்த வியாபாரிகளுக்குக் கொடுப்பது அல்ல இந்தப் பணம். இந்தப் பணம் திருப்பிக் கொடுக்கப்படவேண்டுமானால், கோடிக்கணக்கான ஜனங்கள் பொருள்களை வியாபாரிகளிடமிருந்து வாங்கியிருக்கிறார்களே, அவர்களுக்குத்தான் இந்தப் பணத்தைத் திருப்பிக் கொடுக்கவேண்டும். ஏனென்றால், அவர்கள்தான் இந்த வரியை வியாபாரிகளுக்குக் கொடுத்திருக்கிறார்கள். ஆகையினால், வியாபாரிகளிடமிருந்து பொருள்களை வாங்கும்போது, பொருள்களுக்குள்ள விலையையும் அதோடு கூட விற்பனை வரியையும் கொடுத்திருக்கக்கூடிய கோடிக்கணக்கான ஜனங்களுக்குத்தான் இந்தப் பணம் திருப்பிக்கொடுக்கப்படலாமென்பது, வியாபாரிகளுக்குக் கொடுக்கமுடியாது. பணத்தைத் திருப்பிக்கொடுக்கவேண்டுமென்று சொல்லும்போது, இவ்வளவு ஜனங்களுக்கும் அது போய்ச்சேர முடியுமா என்பதை யும் அவர்கள் சிந்தித்துப்பார்க்கவேண்டும். இதில் சர்ச்சை இவ்வளவு அதிகமாக போய்க்கொண்டிருப்பதன் அவசியத்தை என்னால் புரிந்துகொள்ள முடியவில்லை.

“ஆகையால், அரசாங்கம் இதைச் சட்டத்தின்படி செல்லத்தக்கதாகச் செய்யவேண்டுமென்று நினைப்பதில் நியாயம் இருக்கிறது. இதற்கு முந்தியே எல்லா ஜனங்களிடத்திலும் இது செலவிடப்பட்டிருக்கிறது. அரசாங்கம் அதைக்கவனித்து, அதற்குத் தகுந்த முறையில் பதில் சொல்லவில்லையே என்ற அவாவைத்தவிர, அவர்கள் செய்வதைத் தவறு என்று நான் நினைக்கவில்லை. அரசாங்கம் செய்வது நியாயமானது. இதை நாம் சட்டமாக்கவேண்டியதும் நியாயம் என்று சொல்லிக்கொண்டு இந்த மசோதாவை நான் ஆதரிக்கிறேன்.”

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* SRI MOHAMED RAZA KHAN :—“ Mr. Chairman Sir, I thought that the very persuasive speech of my hon. Friend Sri T. M. Narayanaswami Pillai and the very eloquent speech of the Deputy Leader of the Opposition, no doubt a little bit aggressive, might have made the Hon. the Minister for Revenue think whether it was worthwhile for him to pursue this Bill or withdraw it and come out again with suitable amendments. I was hearing very carefully the speech of the Hon. the Finance Minister who thought he should help his Colleague in pointing out some of the difficulties of the Government. Now, what is the case of our Government? The Deputy Leader of the Opposition referred in this connexion to a question put in the last Assembly somewhere in 1949. It is really a sad reflection that, in spite of the fact that this has been pointed out by Member after Member in the last Assembly and Council, the Government have chosen to collect illegally a tax on tax. They did not care either to consult their legal authorities or the Board of Revenue in the matter. They thought that rightly or wrongly they might collect the tax in spite of the opposition. I was also

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listening to the speech of the ex-Chief Minister Sri O. P. Ramaswami Reddiar, and I may bring to his notice that he too was present when this point was raised, and when it was brought to the notice of his colleague the then Finance Minister that what was being done or what was sought to be done was illegal, the then Finance Minister, who was also in charge of sales tax, said in reply 'If anybody is aggrieved, let him go to a Court of Law and let there be a decision'. Now the matter has been decided by the High Court. Well and good.

"The question now is whether the Government want to give effect to this decision from 1st April 1954 or whether they want to give retrospective effect. The case of the Madras Government is that it is so difficult that it may not be possible for them to see to whom the money should be paid and how it should be paid, and that it is all a very cumbersome process. For instance, on the basis of a collection of Rs. 20 crores by way of sales tax in the then composite State, it looks as if the Madras Government were making Rs. 30 to Rs. 35 lakhs by collecting this illegal tax. Now, the question is how else the matter can be settled. I asked the Hon. the Finance Minister to clarify certain points. It is said that the Government propose to accept with effect from 1st April 1954 the statement of the law made by the High Court. The tax is being paid by the various merchants either on a provisional basis or on the annual turnover. But actually the finalization of accounts is made long after. Now, I wish to know whether the Government are going to levy on the old basis or on the present basis. For instance, the merchant might have paid the tax, say, from 1st April 1953 to 31st March 1954, either on the basis of provisional assessment or on the actual turnover. But the finalization of accounts is done only after 1st April 1954. It may take five or six months and in some cases even two years. Are the Government going to adopt in this case the new principle or the old principle? That is one clarification I wanted from the Hon. the Finance Minister but, he, however, did not give it.

"My next point is this. The Hon. the Minister for Land Revenue and the Hon. the Finance Minister, were saying that all along the merchants were also collecting the tax on tax. I do not think so. I ask the Government whether they can prove even one instance. It is not fair on the part of the Government to take shelter under such pleas. It is not a pleasure either for the Deputy Leader of the Opposition or for Sri T. M. Narayanaswami Pillai to fight. They are not businessmen. It is a question of principle. The Government should always enunciate a good principle so that their successors also may follow it. Even the future Legislature will quote that this was done in the year 1954. We must set up a good precedent. The hon. Member Sri K. Bhashyam thought it fit to support the Government. I expected that his speech will be more vehement than that of even Dr. John. I was surprised how such a change has come over him."

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SRI K. BHASHYAM :—“ Everything surprises the hon. Member.”

* SRI MOHAMED RAZA KHAN :—“ Sir, it is said that things have been done in good faith, that the amount has been spent for the country and that there should not be much fuss about refund, etc. I should like to bring to the notice of the Government that many merchants in this State, particularly the hides and skins merchants, have not charged tax on inter-State business. If to-day, after a lapse of five or six years the Government ask them to pay tens of thousands of rupees as tax, they cannot afford to pay. It is not as if I am talking on their behalf. They have not collected tax for the past five or six years because the law did not permit them to collect such a tax. There have been transactions between States and States amounting to crores and crores of rupees. But if the Government say all of a sudden ‘ We cannot believe your good faith. You ought to have been apprised of the law and you ought to have collected the tax. Inasmuch as you have not collected, you must pay tens of thousands of rupees ’, would it be fair? I therefore ask the Hon. the Minister for Land Revenue whether the Government are going to adopt the same principle in respect of these merchants also. I think that there has been a good deal of agitation in the place of my hon. Friend Sri T. M. Narayana-swami Pillai, namely, Tiruchirappalli, where merchants have been harassed to the maximum extent and asked to pay tens of thousands of rupees. I do understand and appreciate the difficulties of the Government. But it would be unfair on the part of the Government to say that they would not do justice simply because there are some difficulties in the way. Where there is a will there is a way. I request the Hon. the Revenue Minister to clarify what will be the method adopted in all the final assessments which will be made for the year 1953-54 and for the previous years. There may be cases pending before the Sales Tax authorities even from 1949. Where the tax on tax amounts to Rs. 10 or Rs. 15, it would not matter because it is a small amount. But if the turnover of a firm is Rs. 4 crores to Rs. 5 crores and if the firm has paid tax on tax, it may run to thousands of rupees.

“ Now I come to the point raised by my hon. Friend, Sri Gurunandan Row. Is it right on the part of the Legislature to take shelter under the plea that it would be very difficult to return the amounts already collected, irrespective of the decision of the High Court? It would not be fair on the part of the Government to take shelter under the plea of retrospective effect. At this moment, it may not be possible for me to make any direct suggestions. But it is clear that the Government have not given their best consideration to this Bill. The Government ought to have consulted their legal experts. Sometimes the legal experts do not serve them well. But the Government did not care to consult the Legal Department and they were grossly negligent in not having done so. So the best thing for the Government under the circumstances would

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be to take some more time, consider all these aspects, find a way out, and bring forward suitable amendments. But to pass this Bill would be setting up a very bad precedent. It is bad for any Government, whether it is the Congress Government or any other Government."

* THE HON. SRI M. A. MANICKAVELU NAICKER :—" Sir, 4-20
the difficulty which arose in this matter is, in what way the p.m.
turnover should be computed, and whether a tax on tax should also go into the computation of the turnover. The Commercial Tax Department officials according to their interpretation of the law thought that the tax also could be computed in the turnover and they have been following that practice for some time. Sir, as is seen from the judgment of the High Court also, the Judges had to go elaborately into the question of what is a 'sale' and what is a 'price' and all that in order to decide whether the tax will be included in the term 'sale price.' Simply because the officials of the department interpreted it in one particular way, it should not be said they did it with any *mala fide* intention. Sir, we have known cases where very eminent Judges of the High Court came to certain conclusions in interpreting the law. When those cases were taken to the Privy Council, the Privy Council set aside those conclusions, interpreting the law in a different way. So, this is a matter of interpretation. Therefore, even very eminent lawyers go wrong. So, we cannot blame the officials."

DR. V. K. JOHN :—" Is the Hon. Minister suggesting that the High Court judgment is wrong? "

* THE HON. SRI M. A. MANICKAVELU NAICKER :—" I gave quite a separate instance where the High Court came to a particular decision and the Privy Council set it aside. That has nothing to do with the present case. It was argued on the side of the Government that this tax paid on tax should be included in the cost price. But the High Court came to a different conclusion and said that the tax could not go into the contents of the price and so it must be excluded. We have accepted that decision and we have given effect to that as far as practicable. We are giving effect to it from 1st April 1954. But logically it must be given effect to from earlier than 1st April 1954 also. But, as I said there are certain practical difficulties and administrative difficulties upsetting the budgetary position. All these considerations weighed with the Government and that is why we could not give effect to the High Court's decision earlier than 1st April 1954. I now come across another difficulty also. We were then in the composite State, but now partition has taken place. Andhra merchants were also there, and so there will be further difficulty in dividing the collections. That is why we are unable to give effect to the judgment of the High Court retrospectively. But we are taking every precaution to see that from 1st April 1954 the decision of the High Court is given effect to. As far as collections are concerned, the tax had already been included in the turnover and assessment would also be made on the same

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basis for the previous period, i.e., before 1st April 1954. Suppose we make a distinction between the collections made and the assessments, then the hon. Member, Sri Gurunandan Row, will say that it is discrimination and is against Constitution. Therefore, we cannot make a distinction between collections made and assessments and we are forced to take the assessment made before 1st April 1954 also on the old basis."

SRI V. V. RAMASWAMI :—"வியாபாரிகளிடமிருந்து இப்படி அதிகரிப்பதாக வசூலிக்கப்பட்ட தொகை எவ்வளவு என்பதை கணம் மந்திரம் அவர்கள் தெரிவிப்பார்களா?"

*** THE HON. SRI M. A. MANICKAVELU NAICKER** :—"The amount that had been additionally collected would come to about Rs. 20 lakhs to Rs. 25 lakhs roughly.

"The other legal implications have been very ably put forth before the House by my Hon. Colleague, the Finance Minister, and the veteran lawyer, my hon. Friend, Sri K. Bhashyam. I have become an outmoded lawyer not having been in active touch with the practice of law. So, as regards law I cannot speak with so much enthusiasm as others do because I have to brush up my knowledge of law and which, for the purpose of this Bill, I am brushing up now and then. I am very grateful to them for having clarified the situation and made the position clear. There is nothing unconstitutional or unjust in it. Government are doing this with the best of motives and as the hon. Member, Sri Bhashyam, has said, we must take into account the difficulties of the Government also.

"One word more, Sir, with regard to my hon. Friend, Sri Ramaswami Reddiar, our ex-Chief Minister. He has taken a most commonsense point of view. We all forgot about it. He said that after all the money really belonged to the consumer because it is he who paid it. We have never taken that into consideration at all and we have all along been talking only about merchants, turnover and so on. As is rightly pointed out, it is the consumer that has been greatly affected by it and not the dealer. Taking all these into consideration, Sir, it is better that we pass this Bill as framed by the Government."

MR. CHAIRMAN :—"The question is—

'That the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Bill, 1954 (L.A. Bill No. 19 of 1954), as passed by the Assembly, be taken into consideration.' "

The motion was carried and the Bill was taken into consideration.

Clauses 2 and 3.

MR. CHAIRMAN :—"The motion is—

'That clauses 2 and 3 do stand part of the Bill.' "

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SRI V. GURUNANDAN ROW :—“ Sir, I move the amendment standing in my name, viz.,—

‘ For the existing clauses 2 and 3, substitute the following as clause 2 :—

“ No assessment or collection or order made and no action taken by any Officer, and no judgment, decree, or order pronounced by any Tribunal or Court, in exercise of the powers under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) (hereinafter referred to as the principal Act), before the 1st April 1954, shall be called in question in any Court, Tribunal or before any authority after the commencement of this Act on the ground only that any amounts collected by any dealer registered under the provisions of the principal Act and the rules made thereunder by way of tax has been included in his turnover.” ” ”

SRI MOHAMED RAZA KHAN :—“ I second the amendment.”

MR. CHAIRMAN :—“ Is the hon. Member Sri K. Bhashyam moving his amendment? ”

SRI K. BHASHYAM :—“ After all there are three amendments. It is better that my friends agree with me in any manner.”

DR. V. K. JOHN :—“ May I know, Sir, why the hon. Member is developing cold feet? ”

SRI K. BHASHYAM :—“ I do not bother about it. If the hon. Member goes on insulting me just as he insults the Government, I cannot take it lying down.

“ I am moving the amendment standing in my name, viz.,—
‘ For the existing clauses 2 and 3, substitute the following as clause 2 :—

“ All collections made before the 1st April 1954 under any assessment, order, judgment, decree, order pronounced by any Tribunal or Court shall be deemed valid, notwithstanding that such assessment, judgment, decree or order proceeded on the basis that the collection made by a registered dealer by way of tax under the principal Act formed part of the turnover of the dealer.” ” ”

SRI K. BALASUBRAMANYA AYYAR :—“ I second the amendment.”

MR. CHAIRMAN :—“ The amendments are before the House for discussion.”

* SRI V. GURUNANDAN ROW :—“ Sir, the main reason for my amendment is that clauses 2 and 3, as they are at present in the Bill, are, as I have already stated, so wide in their scope that even in assessments for 1953-54, which are not yet completed.

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[Sri V. Gurunandan Row] [14th May 1954]

but which may be completed in 1954-55, the tax can be included as one coming within the meaning of turnover. That is, the Government give two definitions for the word 'turnover', namely, one definition applicable to assessments for the year 1953-54 and another definition applicable to assessments for the subsequent years. The officers will have to apply two different definitions to two different periods, i.e., one for the year before the 1st April 1954 and the other for the year from 1st April 1954. I cannot understand how the officers can apply two definitions at the same time. Therefore, I say that all this verbal jugglery of making a definition with retrospective effect is absolutely unnecessary. The only way to avoid this confusion is to accept my amendment. No assessment made already against the person before 1st April 1954 shall be called in question after the commencement of this Act. This means the persons whose cases are pending disposal by the appellate courts will be entitled to have a decision in their favour. The question is that a claim should not arise after the commencement of this Act. The acceptance of my amendment will solve the question of there being any unconstitutionality about the matter, and also bringing in two definitions, one applicable to the period before 1st April 1954 and the other applicable to the period after 1st April 1954. I cannot understand how the authorities will apply these two definitions at the same time. There can be only one of two definitions about turnover. My submission therefore is that my amendment will make the position clear. If a person has not gone to a court or tribunal in the matter before the commencement of this Act, he cannot do so after the commencement of this Act. Any person who was not vigilant enough to go to court within the prescribed time, cannot claim any refund after the commencement of the Act. The officers cannot make any differentiation regarding these two definitions. Because there is the High Court judgment all people cannot apply for refund as they were not vigilant enough to go to appellate authorities earlier, i.e., before the commencement of the Act. Nobody will be in a position to file a suit now. I think this is the just thing to do, and, I therefore, request hon. Members to accept my amendment."

* SRI MOHAMED RAZA KHAN :—" While supporting the amendment of the hon. Member, Sri Gurunandan Row, I may say, Sir, that I did not anticipate this difficulty and bring it to the notice of the Hon. the Revenue Minister. There are three sets of people whom we have got to consider. The first set are people who have paid, and in whose case it is difficult to refund. The second set are people whose cases are pending court decision. The third set of people are those whose cases are spread over the years of 1947-48, 1948-49, 1950-51, etc. The assessments for these years are not yet complete. When the Government say that this Act will come into force from 1st April 1954, the officers will not have to include the tax as one coming within the turnover for assessments for the year 1954-55 and later years. In the case of earlier assessments, which will be complete only in 1954-55, the

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officers will have to include the tax in the turnover. That is to say, the Government will be levying a tax on tax collected in the years 1954-55. I say that all assessments made after 1st April 1954 in respect of years previous to 1954-55 must not include the tax within the meaning of turnover. Otherwise the position will become very anomalous. All the dealers who have collected tax will be sending the returns only now, and the officers will be assessing them to tax only now. Although the Government say that this Act will come into force from 1st April 1954, still they will be making assessments for the year 1953-54 only in 1954-55, and they will include this tax in the turnover. The Government should say that all assessments made in 1954-55 should not include the tax collected the dealers. (Interruption.) As an illustration, I say that if my business for the last year is Rs. 5 lakhs, the Government will now be assessing me on Rs. 5 lakhs plus the tax I have collected. The Government may consult their departments and bring in suitable amendments to remove this anomaly."

* THE HON. SRI M. A. MANICKAVELU NAICKER :—
" Sir, as a piece of able drafting no doubt the hon. Member, who is an able lawyer, has made his amendment short and smart. I do not know what pitfalls there will be in his amendment. So I do not want to disturb the framework of my Bill. The idea is to give effect to the court's decision in respect of assessments from the year 1954-55. Hon. Members opposite concede that assessments in respect of previous years will be made on the old basis. Otherwise there will be discrimination between two sets of merchants, one from whom we have collected and another from whom we have not. Hereafter, i.e., from 1954-55 'turnover' will not include the tax collected by the merchants."

MR. CHAIRMAN :—" The question is—

' For the existing clauses 2 and 3, substitute the following as clause 2 :—

" No assessment or collection or order made and no action taken by any officer, and no judgment, decree, or order pronounced by any Tribunal or Court, in exercise of the powers under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), thereafter referred to as the principal Act), before the 1st April 1954, shall be called in question in any Court, Tribunal or before any authority after the commencement of this Act on the ground only that any amounts collected by any dealer registered under the provisions of the principal Act and the rules made thereunder by way of tax has been included in his turnover." "

The amendment was lost.

* SRI K. BHASHYAM :—" Sir, there is plenty of confusion in respect of this matter at least in the mind of the Government. That is what I think. There are two points to consider about the duty of the Government when they find that they have been in

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the wrong. One is to accept the decision of the High Court in good spirit and act up to it strictly, logically and to the fullest extent possible. I use the word 'possible'. Why I say 'possible' is that they should not make further mistakes, but should correct only those mistakes which they have committed already. That is the proper position for them to take. If they take any other position, they will have to justify it before the bar of public opinion. Government will have to say 'in spite of the fact that the High Court has said it is wrong, and even though we accept the judgment of the High Court, still we will persist in our own folly and go on collecting the amount in the same old way as we have been doing before'. This is a thing which the Government will find hard to justify when the matter is taken to the Court. I would like hon. Members of this House to go through clause 3 carefully and note the words used in that clause. The clause reads thus: 'All assessments and collections made, all orders passed, and all action taken by any officer in the exercise or purported exercise of jurisdiction or powers conferred by the principal Act and all judgments, decrees or orders pronounced by any Tribunal or Court in the exercise of its jurisdiction or powers with respect to matters in the principal Act, on the basis that amounts collected by a dealer by way of tax under the principal Act before the 1st April 1954, formed part of the turnover of the dealer are hereby declared to have been validly made, passed, taken or pronounced, as the case may be; and any finding recorded by any officer, Tribunal or Court to a contrary effect and any order, judgment or decree in so far as such order, judgment or decree embodies or is based on any such finding and does not relate merely to the costs of the proceeding which resulted in the judgment, decree or order, shall be void and of no effect'. What does this mean? The Government set at naught the High Court judgment altogether. The person who went to Court got a decree in his favour declaring that the assessment made by the Government was wrong. That High Court judgment is said to be void and it shall have no effect. That is what it comes to. With all due deference to the Government, I should think they should not have gone to the extent they have gone in this case. Is it their object to set at naught the judgment of the High Court which said that the action of the Government in including sales tax in turnover was wrong? I think not. The only excuse for the Government in not returning the money illegally collected is that they do not have that money in their pocket, and that they have spent it away. The Government are therefore not able to pay it back. Secondly, if it is to be paid back, to whom is it to be paid? That is a difficult matter. It may be easy in some cases but it will be difficult in most cases. The Government do not want to make a distinction between these persons. So they have decided not to return the money collected to anybody. That is the proper position to take. But to say further that any assessment made hereafter, any judgment delivered hereafter, any proceeding pending in

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courts today, and any decree to be passed hereafter shall be bound by this clause, which says that turnover shall include sales tax, is not proper. Suppose a matter is pending before the Tribunal. What will the Tribunal say? It will say: 'In our conscience we think that the tax should not be included in the turnover'. But the Bill will say that that judgment is wrong and shall be null and void. This is a thing which I cannot understand. It is most improper for any Government to do. Therefore, I feel very strongly that the clause as it stands goes far beyond what is proper, and should not be rushed through. There may be difficulties in administration, but we must do things honestly and properly. So, I would like the Government to reconsider the matter and come to a definite conclusion. I would even suggest that we may adjourn now so that Government may consider the position and come to a decision in respect of this matter. Of course I make this suggestion only if the Hon. Minister is convinced about my point. If he is not convinced to-day; I do not know how he is going to be convinced tomorrow. I would like the Hon. Minister to consider the enormity of the consequences that may ensue by such an enactment as this. I implore him, I beg of him, and I request him not to hesitate to take this course. My amendment is a simple one and makes the position clear. It is slightly different from the amendment given notice of by the hon. Member Sri Balasubramanya Ayyar, but it is almost the same thing. My amendment reads thus: 'All collections made before the 1st April 1954, under any assessment, order, judgment, decree, order pronounced by any Tribunal or Court shall be deemed valid, notwithstanding that such assessment, judgment, decree or order proceeded on the basis that the collection made by a *registered* dealer by way of tax under the Principal Act formed part of the turnover of the dealer'. This carries out all that the Government have in view as stated in the Statement of Objects and Reasons. The Statement of Objects and Reasons itself says that the Government want to respect the High Court judgment. My amendment will carry out the object of the Government fully and it is the proper thing to do."

* SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, I have agreed to support the amendment of the hon. Member Sri K. Bhashyam and not to press my amendment. The point is very simple and I take my stand on the commonsense point of view as was mentioned by the hon. Member Sri O. P. Ramaswami Reddiar. The amount collected by the Government has been declared to be wrong by the High Court. So long as there is no appellate court judgment differing from this judgment, the judgment of the High Court declares the law in respect of this matter from the beginning. That is a well-accepted principle of law. Therefore, let us not say that collection to be made in future including the tax in the turnover will also be valid. We shall confine ourselves to the actual collections which have already been made

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and leave the rest out of consideration, because the High Court has said that it is irregular. I say, Sir, Government have been well advised in accepting the law. Government have done magnanimously well in saying that they will not levy a tax on tax after 1st April 1954. The collections made already have been held invalid by the High Court and unfortunately as was pointed out by the hon. Member Sri O. P. Ramasami Reddiar the money has been spent and the Government are not going to refund the money to the persons who paid them. Therefore the money is held by the Government (and the Government are the Government of the people) and therefore let them have it for the benefit of the people. (An hon. Member : "It has already been spent.") That has been spent for the benefit of the people by the Government. My submission is, let us confine ourselves to the legal position. Let all collections made in pursuance of orders, judgments or decrees that have already been made stand. That is the simple commonsense point of view."

4-50
p.m. * DR. V. K. JOHN :—" Mr. Chairman, Sir, I want to say only a word more in regard to the amendment of the hon. Member Sri K. Bhashyam. I am quite sure I can take a bet with anybody that this Bill when passed into law will be declared *ultra vires* of this Legislature by our Courts. As I am quite sure of that I would welcome the amendment brought in by the hon. Member Sri K. Bhashyam. I am glad that he has come forward with this amendment. Eminent lawyer and draftsman as he is, he has drafted something which is simple and understandable and at the same time meets our objective to some extent. It also takes up the position that we are not attacking the judgments of Courts. Now, I am only wondering whether the Hon. the Minister in charge will be so obstinate as not to accept the amendment. If anybody reads the clause, he will find that it is perhaps the most ill-drafted clause which has come before this House. Instead of this clumsy clause the hon. Member Sri K. Bhashyam has given us a very short draft. I find that it is very embarrassing for an eminent lawyer like the hon. Member Sri K. Bhashyam to be a member of the Congress Party. He has felt it his duty to correct the clause and he has boldly come forward with his amendment. I appeal to this Government not to be obstinate but to accept his amendment. Let them take some time as the Mover of the amendment has suggested and prove at least in one instance they are not obstinate. Let not the Hon. Minister get up and say that the Government do not accept the amendment although it has been moved by one of their own partymen eminent as he is as a lawyer and draftsman."

SRI S. NARSAPAYYA :—" Mr. Chairman, Sir, I beg to oppose this amendment though it has been moved by a Member from this side of the House. Let it not be thought that the Government will accept the amendment because of the encomiums paid by the hon. the Deputy Leader of the Opposition to the hon. Member Sri K. Bhashyam. I am in perfect agreement with the

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view that it was done with a motive. (Interruption.) As the Hon. the Minister for Land Revenue says the hon. Member Dr. V. K. John has paid encomiums to the hon. Member Sri K. Bhashyam not because the amendment has come from him but because it suits the hon. Member Dr. V. K. John to do so.

“ Now, the position of the Government has been made very clear both by the Hon. the Minister for Land Revenue and by the Hon. the Minister for Finance. The question is that so far as the assessments for the period up to 1st April 1954 are concerned, the Government want that the turnover must include the tax collected, and in deference to the judgment of the High Court, after the 1st April 1954, the turnover must not include the tax collected. There is absolutely no disrespect meant either to the Appellate Tribunal or to any judgment of the High Court. The Hon. the Minister for Finance has made absolutely clear the basis of the judgment, namely, that as the law stands at present the definition of turnover does not include any tax that might have been collected by a registered dealer, and he has also stated that this House is quite competent to amend the definition or turnover to include the tax collected up to 1st April 1954. The main criterion or the main point that divides the two, namely, the definition according to law as laid down by the High Court and the definition now provided for in this Bill, is the crucial date, 1st April 1954. According to the Bill, on tax payable up to 1st April 1954 the turnover will include the tax collected by the dealer and after the 1st April 1954 the tax collected will not be included in the turnover. So far as this provision is concerned, I would only invite the attention of this House to the anomaly we would have to face if the amendment is accepted. There are cases where the merchants or the dealers have been regularly paying the tax as assessed by the Government. There are others who have been putting obstacles at every stage, who have not paid regularly and who have been going to Tribunals and Courts engaging eminent lawyers like the hon. Member Dr. V. K. John, contending against every order of the assessing authority or the Tribunal or even against the judgments of the High Court. We would only be putting a premium on these recalcitrant assesseees who have not been paying regularly and, on the other hand, we would be levying a fine on those who have been paying regularly by not returning the tax on tax that had been collected. This sort of distinction between those who have been regularly paying and those who have not been regularly paying is certainly not correct, and the Government are perfectly right in stating that the turnover up to 1st April 1954, shall include the tax collected, that is, whoever has collected the tax, whether he has been paying the tax regularly or whether he has been putting obstacles at every stage and has been able to put off paying the tax up to now, his turnover shall include the tax collected.

“ I would also invite the attention of the House to the fact that we have rejected the amendment moved by the hon. Member

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Sri v. Gurunandan Row which goes much further than the hon. Member Sri K. Bhashyam's amendment. His amendment was to the effect that no assessment or collection or order made and no action taken by an officer and no judgment, decree or order pronounced by any Tribunal or Court before the 1st April 1954 shall be questioned. After rejecting this amendment that even the assessments made prior to 1st April 1954 should not be questioned, how are we to accept the amendment moved by the hon. Member Sri K. Bhashyam? It is not correct to say that we are going against the judgment of the High Court by saying that the turnover for purposes of assessment shall include the tax collected up to 1st April 1954. I therefore beg to oppose the amendment."

THE HON. SRI M. A. MANICKAVELU NAICKER :—" Mr. Chairman, Sir, I am not able to accept the amendment even though it has been moved by an hon. Member sitting behind me. The position has been clearly explained by the last speaker, the hon. Member Sri S. Narsapayya, who is also a lawyer and probably my hon. Friend Dr. V. K. John may not shower any encomiums on him, at any rate, on this occasion. The Government have accepted the principle enunciated by the High Court and we are giving effect to it from the 1st April 1954. Hon. Members who oppose the Bill say that because the Government expressed some difficulties in regard to refund they have no objection to the validating of such assessments where the amounts have been collected, but they want the Government not to validate those assessments made for the period ending 31st March 1954 if the amounts have not been collected because the difficulty regarding refund does not arise in their case. There are some administrative difficulties here also. The judgment was actually pronounced in January 1954 and the Government did not want to break the financial year which ended by the 31st of March. Administrative convenience requires that the financial year should not be split. I do not think that any great hardship will be caused by this. I have therefore to oppose this amendment."

* SRI K. BHASHYAM :—" Sir, I would like to point out as a final appeal to the Government that I have taken upon myself a very big responsibility in moving an amendment like this against a Government measure. I did it with full responsibility because I felt that the Government would be stultifying itself if it really persisted in the way it is doing. I did it for the sake of the credit of the Government and not as a step against it. I want to make this clear on the floor of this House.

" My hon. Friend, Sri S. Narsapayya, who defended the measure made out a very good point which I would like to answer. He has said that, if the amendment is to be accepted, persons who have been regularly paying their assessments will be penalised while persons who have not been paying regularly and have been persistently defaulting either because they have no money or for some other reason, will get the benefit of it. It is no doubt a very good

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point. Now let us see what we have been doing all these years in respect of prior legislations. In the case of arrears of rent, the tenants who had been paying rent regularly were penalised, but persons who were persistently making default got the benefit. Similarly, under the Agriculturists' Relief Act, all interest was wiped out. Persons who were paying interest regularly were penalised. Therefore, this is the effect of legislation in respect of things which go against nature. So, when we go against nature, we have to do some injustice somewhere or other. There are always bound to be hard cases. The least injustice that we can do is to say that those who have not paid may get the benefit. There is also another point. If an assessment has been made already, whether the person has paid it or not, the assessment is there. In such cases also the assessee is penalised.

"One more point, Sir, and I have done. Even the return of the amount can be only under the provisions of the Act, that is to say, persons who object to the assessment must have preferred appeals to the Commissioner within 30 days or to the Appellate Tribunal within sixty days or to the High Court within the prescribed time. That is the only way in which the assessment is going to be impeached. Such cases may not be very many. Therefore, if my amendment is accepted, the question of returning a large amount of money may not arise. Persons who really want refund of the money will be only very few because most of them might not have preferred appeals in time. The matter is closed in their case. Even from the administrative point of view, the Government need not hesitate to accept my amendment, because the cases of return will be fairly few."

MR. CHAIRMAN :—"I shall now put the amendment of the hon. Member Sri K. Bhashyam to the vote of the House. The question is—

'For the existing clauses 2 and 3, substitute the following as clause 2 :—

"All collections made before the 1st April 1954 under any assessment, order, judgment, decree, order pronounced by any Tribunal or Court shall be deemed valid, notwithstanding that such assessment, judgment, decree or order proceeded on the basis that the collection made by a registered dealer by way of tax under the principal Act formed part of the turnover of the dealer." "

The amendment was declared lost.

Dr. V. K. John demanded a poll and the House divided thus :—

Ayes—9.

Sri K. Balasubramanya Ayyar.
„ K. Bhashyam.
„ V. Chakkarai Chetty.
„ T. V. Devaraja Mudaliar.
„ M. P. Govinda Menon.

Dr. V. K. John.
Sri G. Krishnamurthi.
„ Mohamed Raza Khan.
„ V. V. Ramaswami.

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Noes—20.

Sri A. M. Allapichai.
„ N. Annamalai Pillai.
„ V. Bhashyam Iyengar.
The Hon. Sri M. Bhaktavatsalam.
Sri T. M. Daivasikamani Achariar.
„ M. Ethirajulu.
„ A. Gajapathy Nayagar.
„ K. Gopalan.
„ T. G. Krishnamurthy.
Srimathi S. Manjubhashini.

Sri C. Maruthavanam Pillai.
„ Mahomed Usman.
„ S. Narsapayya.
„ C. Perumalswami Reddi.
„ O. P. Ramaswamy Reddiar.
„ V. Rangaswami Naidu.
„ T. S. Saakaranarayana Pillai.
„ A. Subramanyam.
„ G. Venkatachalam.
„ P. P. Ummar Koya..

Neutral—1.

Srimathi R. S. Subbulakshmi.

Ayes—9; Noes—20; Neutral—1.

The amendment was lost.

Clause 2 was put and carried.

Clause 3 was put and carried.

Clause 1 and the Preamble were put and carried.

5-10
p.m.

* THE HON. SRI M. A. MANICKAVELU NAICKER :—“ Sir
I move—

*‘ That the Madras General Sales Tax (Definition of Turnover
and Validation of Assessments) Bill, 1954 (L.A. Bill No. 19
of 1954), as passed by the Assembly, be passed into law. ’ ”*

* DR. V. K. JOHN :—“ Sir, I move that the third reading of
the Bill be adjourned to another date. I am entitled to do it under
the Rules. ”

MR. CHAIRMAN :—“ What are the Rules? ”

* DR. V. K. JOHN :—“ Sir, the relevant rule is 98 (2). It
reads thus—

*‘ If, when a Bill is considered, any amendment is made, any member may,
at the conclusion of the consideration of the Bill, object to a motion being made at
the same sitting for its being passed. Thereupon, the Chairman shall, unless he
considers that the request is frivolous or unreasonable, not allow a motion that the
Bill be passed into law to be moved at the same sitting, but the Bill shall be
brought up for further consideration at a subsequent sitting. ’ ”*

MR. CHAIRMAN :—“ The rule refers to cases when amend-
ments have been carried. No amendments have been carried and
so, the House can proceed with the third reading. Anyone who
wants to speak on the third reading stage of the Bill? ”

DR. V. K. JOHN :—“ I beg to express the hope, Sir, that
this Bill will not be passed into law because it is thoroughly uncon-
stitutional and illegal. I can assure this House that if this Bill is
passed into law, the courts in this country will declare it *ultra vires*
and Legislatures like this would be put to discredit. I suggest
again that the Government should reconsider the matter and see
that this Bill is not passed. ”

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* SRI MOHAMED RAZA KHAN :—" Sir, I have one word to add to what the hon. Member Dr. John has said. The Bill is going to be passed. But we have the satisfaction that we have done our duty and that we have pointed out in time the anomalies in the Bill. If still the Government persist in doing things in their own way we will only say that it is Government's responsibility and that they must face the situation when the time comes."

MR. CHAIRMAN :—" The question is—

' That the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Bill, 1954 (L.A. Bill No. 19 of 1954), as passed by the Assembly, be passed into law.' "

The motion was carried and the Bill was passed into law.

MR. CHAIRMAN :—" The House will now adjourn and meet again at 2-30 p.m. to-morrow."

The House then adjourned to meet again at 2-30 p.m. on Saturday, the 15th May 1954.

IV.—PAPERS LAID ON THE TABLE OF THE HOUSE.

Bills passed by the Assembly and received therefrom in the Council—

* (a) *The Madras General Sales Tax (Second Amendment) Bill, 1954 (L.A. Bill No. 20 of 1954).*

* (b) *The Madras Medium Cotton Mill Cloth (Sales Tax) Bill, 1954 (L.A. Bill No. 21 of 1954).*

வாய்மையே வெல்லும்
TRUTH ALONE TRIUMPHS